

he or she must submit a written request to the Department of Justice for approval to issue a notice under §28.25.

(b) The request shall include a description of the claims or statements at issue; the evidence supporting the notice; an estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of §28.10; any exculpatory or mitigating circumstances that may relate to the claims or statements; and a statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

#### **§28.25 Complaint.**

(a) *General.* Upon obtaining approval from the Department of Justice, the General Counsel or designee may issue a complaint to the respondent. The complaint shall be sent by certified mail, return receipt requested, or shall be personally served.

(b) The complaint shall include:

(1) The allegations of liability against the respondent, including the statutory basis for liability, the claims or statements at issue, and the reasons why liability arises from those claims or statements;

(2) The amount of penalties and assessments for which the respondent may be held liable;

(3) That the respondent may request a hearing by submitting a written response to the complaint;

(4) The address to which a response must be sent; and

(5) That failure to submit an answer within 30 days of receipt of the complaint may result in the imposition of the maximum amount of penalties and assessments sought without right of appeal.

(c) A copy of this part 28 and of 24 CFR part 26, subpart B shall be included with the complaint.

#### **§28.30 Response.**

(a) The respondent may submit a written response to HUD within 30 days of service of the complaint. The response shall be deemed to be a request for hearing. The response should include the admission or denial of each allegation of liability made in the complaint; any defense on which the re-

spondent intends to rely; any reasons why the penalties and assessments should be less than the amount set forth in the complaint; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.

(b) *Filing with the administrative law judges.* HUD shall file the complaint and response with the Chief Docket Clerk, Office of Administrative Law Judges, in accordance with §26.37 of this title. If no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with §26.39 of this title.

#### **§28.35 Disclosure of documents.**

Upon receipt of a complaint, the respondent may, upon written request to the General Counsel or designee, review any relevant and material non-privileged documents, including any exculpatory documents, that relate to the allegations set out in the complaint. Exculpatory information that is contained in a privileged document must be disclosed.

#### **§28.40 Hearings.**

(a) *General.* Hearings under this part shall be conducted in accordance with the procedures in 24 CFR part 26, subpart B.

(b) *Factors to consider in determining amount of penalties and assessments.* In determining an appropriate amount of civil penalties and assessments, the administrative law judge (ALJ) and, upon appeal, the Secretary shall consider and state in their opinions any mitigating or aggravating circumstances. Because of the intangible costs of fraud, the expense of investigating fraudulent conduct, and the need for deterrence, ordinarily double damages and a significant civil penalty should be imposed. The ALJ and the Secretary shall consider the following factors in determining the amount of penalties and assessments to be imposed:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the respondent's culpability with respect to the misconduct;